

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

**JASON E. MAXWELL,** )  
v. )  
Plaintiff, )  
STATE OF OKLAHOMA, et al., )  
Defendants. )  
No. CIV 18-069-Raw-SPS

## **OPINION AND ORDER**

Plaintiff, a pro se pretrial detainee who is incarcerated in the Okmulgee County Jail in Okmulgee, Oklahoma, filed this civil rights complaint under the authority of 42 U.S.C. § 1983. He alleges he has been denied his constitutional rights of due process, equal protection, and a speedy trial.<sup>1</sup> He seeks relief in the form of dismissal of his pending charges and his release from custody (Dkt. 1 at 5). The requested relief, however, is not available in this action.

“[A] prisoner who challenges the fact or duration of his confinement . . . must do so through an application for habeas corpus.” *Palma-Salazar v. Davis*, 677 F.3d 1031, 1035 (10th Cir. 2012) (citing *McIntosh v. U.S. Parole Comm’n*, 115 F.3d 809, 812 (10th Cir. 1997)). A state pretrial detainee may bring a habeas action in federal court to “demand enforcement of the [State’s] affirmative constitutional obligation to bring him promptly to trial.” *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 490 (1973) (citation omitted). He, however, may not seek habeas relief to forestall state prosecution altogether. *See id.* at 490-91; *Capps v. Sullivan*, 13 F.3d 350, 354 (10th Cir. 1993) (holding that pretrial habeas petition can only seek to force the state to go to trial). Therefore, if Plaintiff wants to pursue

<sup>1</sup> Plaintiff does not state which of his criminal cases he is challenging.

his claim regarding a speedy trial, he must file a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, after exhausting available state court remedies. *See Montez v. McKinna*, 208 F.3d 862, 866 (10th Cir. 2000).

**ACCORDINGLY**, this action is, in all respects, DISMISSED WITHOUT PREJUDICE, and Plaintiff's motion for leave to proceed *in forma pauperis* is DENIED AS MOOT.

**IT IS SO ORDERED** this 8th day of May 2018.

**Dated this 8<sup>th</sup> day of May, 2018.**



Ronald A. White  
United States District Judge  
Eastern District of Oklahoma